

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4328 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1-5 No
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IFATEKHAR AHMED ABDUL MAJID SHAIKH

Versus

STATE OF GUJARAT

Appearance:

MR. N.K. PAHWA FOR M/S THAKKAR ASSOC. for Petitioner
MR. H.L. JANI, AGP, for Respondent No. 1
MR. B.T. RAO, for Respondent No. 4

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 02/09/98

ORAL JUDGEMENT

By way of this Special Civil Application the petitioner has challenged the order of detention dated 14.8.1998 passed by the District Magistrate, Surat. The said authority has passed the impugned order in exercise of the power as conferred by Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

It is contended by Mr. Pahwa, learned counsel for the petitioner that the brother of the detenu made a representation dated 22.5.1998 addressed to the Hon'ble Minister, Civil Supply, Consumer Affairs and Public Distribution, New Delhi by speed post. The same was received in the office of the Hon'ble Minister on 25.5.1998. The said representation has not yet been decided. Mr. K.V.S. Rao, Under Secretary, in the Department of Consumer Affairs, New Delhi has filed an affidavit stating that the representation stated 22.5.1998 made by the detenu was received in the concerned Section on 4.6.1998. Vide telegram dated 4.6.1998 the comments were invited from the State Government and they are still awaited. Learned A.G.P. appearing for the State Government submits that the comments were sent on 11.6.1998. The continued detention without deciding the representation is in violation of Article 22(5) of the Constitution of India. Following the decision laid down by the apex court in the case of HARISH PAHWA VS. STATE OF U.P. reported in AIR 1981 SC 1126 the detention of the petitioner has to be declared unconstitutional.

In view of the aforesaid, this Special Civil Application is allowed and the order of detention dated 18.4.1998 passed by the District Magistrate is quashed and set aside. The detenu shall be released forthwith if not required in any other case. It is stated by the learned counsel that the petitioner has been transferred to sub-jail, Bharuch. Writ be sent to sub-jail, Bharuch. Rule made absolute accordingly.

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